IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 2937 of 2006()

C.R.NO.13/2006 OF THE EXCISE RANGE OFFICE, VAMANAPURAM, THIRUVANANTHAPURAM DISTRICT.

PETITIONER: ACCUSED NO.1 & 2:

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1. BIJU, S/O. VISWAMBHARAN,
   PUTHENVEETTIL,SARKARA VILLAGE,CHIRAYINKEEZHU TALUK
   THIRUVANANTHAPURAM DISTRICT.

2. SANTHOSH KUMAR, S/O. GOPALAN,
   MEKKUMKARA PUTHENVEETTIL, CHILAVAKODU DESOM,
   MARANELLOOR VILLAGE, NEYYATTINKARA TALUK,
   THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.NIREESH MATHEW

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY EXCISE INSPECTOR,VAMANAPURAM EXCISE RANGE, THIRUVANANTHAPURAM DISTRICT BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/12/2006 ALONG WITH CRL.M.C.NO.4004 OF 2006 AND OTHER CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 2937, 4004, 4005, 4018, 4046 & 4080 OF 2006

Dated this the 20th day of December, 2006

ORDER

The petitioners in these cases are the licensees (in some cases) and employees/salesmen of toddy shops which they run under the provisions of the Kerala Abkari Act and the Rules thereunder.

2. There is a common allegation raised against the accused persons/the petitioners in all these cases. When the Excise Officials inspected the toddy shops on various dates, the toddy which was found available was found to contain starch. There is a consequent allegation that thereby the licensees/ their salesmen/indictees herein have committed the offence punishable under Sec.57(a) of the Abkari Act and consequently, they are liable to be convicted for the offence punishable under Sec.56(b) of the Abkari Act.

3. The learned counsel for the petitioners submit that the allegations, even if accepted in toto, cannot expose the petitioners to any liability under Sec.57(a) and Sec.56(b) of the Abkari Act. Except the allegation of violation of Section

57(a) of the Abkari Act, no other allegation is raised to justify a charge under Sec.56(b) of the Abkari Act.

4. The learned counsel for the petitioners submit that the presence of starch in the toddy which is found in a toddy shop cannot, by any stretch of imagination, be held to attract the offence under Sec.57(a) of the Abkari Act inasmuch as there is no allegation even that any foreign ingredient which is likely to add to its actual or apparent intoxicating quality or strength of the toddy has been added or found present in the toddy. The learned counsel for the petitioners rely on a Government Order – G.O.(Rt) No.311/04/FD dated 4/5/2004 in support of this assertion. They also rely on the unreported decision of this Court in **Baiju and another v.** State of Kerala **(**Crl.M.C.No.920/06 dated 1/12/2006). It is prayed that, in these circumstances, the prosecutions initiated against the petitioners and the crimes registered against them may be quashed. The learned counsel for the petitioners submit that it is necessary to invoke the powers under Sec.482 of the Cr.P.C. immediately as the registration of these unjustified crimes is sought to be relied on to cancel the licences issued in favour of the petitioners to

run the toddy shops.

5. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor after taking instructions fairly concedes that there is no sustainable allegation under Sec.57(a) of the Abkari Act against the petitioners and that in the light of the decision in **Baiju and another v.** State of Kerala **(**Crl.M.C.No.920/06 dated 1/12/2006) which has not been challenged, the presence of starch cannot be held to be sufficient to attract culpability under Sec.57(b) of the Abkari Act. Nor can that be made foundation for an allegation under Sec.56(b) of the Abkari Act also.

6. In the total absence of any attempt to support or justify the registration of the crimes and further steps against the petitioners, I am satisfied that following the dictum in **Baiju and another v.** State of Kerala **(**Crl.M.C.No.920/06 dated 1/12/2006) all criminal proceedings initiated against the petitioners can be quashed.

7. The learned Public Prosecutor was requested to explain whether the State has a case that addition of starch is likely to enhance/increase the intoxicating quality or strength of

the toddy. The learned Public Prosecutor submits that the State sticks to the stand taken in the Government Order dated 4/5/2004 that addition of starch does not and will not enhance the intoxicating quality or strength of the toddy. If that be the stand taken by the State, certainly the initiation of the proceedings against the petitioners is not justified. Therefore, accepting the stand taken by the learned Public Prosecutor that the State sticks to the stand taken in the Government Order dated 4/5/2004, I am satisfied that the proceedings can be quashed.

8. These Crl.M.Cs. are, in these circumstances, allowed. The crimes registered against the petitioners referred to in the respective petitions shall stand quashed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge